Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
AT&T Petition for Declaratory Ruling	)	WC Docket No. 02-361
that AT&T's Phone-to-Phone IP	)	
Telephony Services are Exempt from	)	
Access Charges	)	

REPLY COMMENTS OF GVNW CONSULTING, INC.

Introduction and Background

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory support on issues such as universal service, advanced services, and access charge reform for communications carriers in rural America. We are pleased that the Commission has requested comments and replies on AT&T's attempt to avoid compensating ILECs for the use of their assets and facilities.

The purpose of these reply comments is to respond to the Commission's Public Notice seeking comments and replies on the petition filed on October 18, 2002, by AT&T Corp (AT&T). In its Petition for a Declaratory Ruling, AT&T requested that its Phone-to-Phone IP Telephony Services be considered exempt from interstate access charges unless and until the Commission adopts regulations that prospectively provide otherwise (AT&T Petition at 33).

In brief, AT&T asserts incorrectly that ILEC access charges on its phone-to-phone IP telephony services violate the Congressional mandate to preserve a competitive free market for the Internet and the Commission's policy of exempting all VoIP services from access charges pending the future adoption of regulations on this subject (AT&T Petition at 2). As we will show in our reply comments, the Commission should deny this petition. We concur with the concerns raised by Qwest:

> *A declaratory ruling proceeding is not a proper vehicle to overturn existing precedent. Any such overhaul would require the complete record of a rulemaking. Indeed, the Commission has an open proceeding on intercarrier compensation in which issues related to compensation for phone-to-phone IP voice telephony can be logically addressed. (Qwest, page 4)*

The National Exchange Carrier Association (NECA) voiced further concerns with the petition at page 5 of their filing:

> *Grant of AT&T's Petition would have serious negative consequences not only for local exchange carriers ("LECs"), but also for their customers and the public interest.*

Summary of Reply Comments

We believe the Commission should reject AT&T's instant petition in this docket that seeks to avoid compensating ILECs for the use of their exchange access facilities and amend portions of Part 69 of its rules for the following reasons:

1) AT&T's petition seeks to avoid compensating ILECs for the use of their facilities and assets;

2) Addressing IP telephony issues without considering all of the ramifications, especially the issues pertinent to rural carriers, would have a disastrous impact on the Commission's access charge regime;

3) AT&T attempts to create a "regulatory technology preference" in order to avoid compensating ILECs for use of local exchange facilities;

4) AT&T's reliance on the "New Service" claim is incorrect;

5) ILEC actions criticized by AT&T in its petition are attempts to recover legitimate compensation for use of ILEC facilities;

6) AT&T's petition does not provide proper interpretations of current regulatory rules.

GVNW Consulting, Inc. now offers further detail on the six points above with the following reply comments that recommend the rejection by the Commission of AT&T's Petition in WC Docket No. 02-361.

AT&T's PETITION SEEKS TO AVOID COMPENSATING ILECs FOR THE USE OF THEIR FACILITIES AND ASSETS

Despite AT&T's protestations, the ILEC still must perform the access functions, as the location and method of operation of the calling and called parties have not changed. Carriers that provide interexchange phone-to-phone telecommunications services via the public switched network are currently required to pay access charges under Commission rules. Other parties filing comments supporting this view of current rules include rural and non-rural LECs, and state PUCs. Several examples include:

On the second page of their comments, the New Hampshire Public Utilities Commission (NH PUC) placed on the record the following:

> *Second, AT&T seeks a ruling that would lead to the elimination of access charges, without making an argument that would support a major policy change in the compensation paid to local exchange carriers for the use of their facilities by other carriers.*

On the first page of their comments, Qwest states that:

> *There is no question that phone-to-phone IP telephony services are subject to carriers' carrier charges for utilizing local exchange switching facilities for the origination and termination of calls regardless of the technology employed.*

Nothing has changed, despite AT&T's spurious allegations

It is not surprising that AT&T seeks to attack the transport and transmission elements of access. After the elimination of the carrier common line charge and the large reductions in switching rates, this is virtually the only area left for IXCs to complain about. However, the plain fact of the matter is that nothing has changed with respect to the basic access relationship contemplated in Part 69 of the FCC's Rules. This fact was overwhelming pointed out in the filed comments. Illustrative examples include:

> *Phone-to-phone IP telephony is identical, by all relevant regulatory and legal measures, to any other basic telecommunications service, and should not be confused with calls to the Internet through an ISP. Merely invoking the word "Internet", however, does not exempt a service from access charges. (BellSouth, pages 4-5, and 6)*

> *The transmission in the phone-to-phone telephony service described by AT&T's Petition connects to the ILEC's networks at both ends of the AT&T network utilizing circuit-switched protocols, while the transmission originates and terminates at the premises of the calling and called parties in analog format. In fact, to the customer, this phone-to-phone telephony service appears identical to traditional circuit-switched voice services. The LEC physical facilities used to originate or terminate phone-to-phone IP telephony services are identical to those used to originate or terminate AT&T's other voice telephony services. (Qwest, pages 2,19)*

ADDRESSING IP TELEPHONY ISSUES WITHOUT CONSIDERING ALL OF THE RAMIFICATIONS, ESPECIALLY THE ISSUES PERTINENT TO RURAL CARRIERS, WOULD HAVE A DISASTROUS IMPACT ON THE COMMISSION'S ACCESS CHARGE REGIME

Ignoring the impact of AT&T's unfounded petition on access, the lifeblood of local exchange carriers, could produce perhaps unintended, but nonetheless disastrous results.

In their comments, SBC Communications (SBC) illustrates this fact with the following statement that is found on page 16:

> *Moreover, addressing IP telephony issues on a piecemeal basis without considering all of the ramifications could have a disastrous impact on the Commission's access charge regime.*

OPASTCO offers projected impacts to other sections of the Commission's rules in the following excerpt from page 7 of their filing:

> *Providing IXCs with below-cost access to the local loop through end-user rates harms the ability of rural LECs to serve customers and conflicts with sections 254 and 706 of the Act.*

As reflected on page 1 of the National Telecommunications Cooperative Association (NTCA) comments:

> *AT&T couches its petition as request for exemption from existing access charges, but if adopted, it would have an increasingly severe effect on universal service . . .*

This impact to federal universal service policies is evidenced in USTA's comments at page 10:

> *If the FCC were to grant AT&T's request that access charges should not be assessed to IP Telephony, the FCC may well be jeopardizing the future of the Universal Service Fund (USF).*

While not quantified, some of the potential dislocation is explained in the following excerpt:

> *AT&T is seeking to exploit the ISP exemption for a wholly different purpose - the delivery of interstate calls to potentially thousands of non-ISP subscribers without incurring access charges. … The effect of AT&T's requested ruling would be to create a massive new subsidy flowing from local telephone companies to IP telephony providers. (SBC, page 12)*

This would be especially deleterious to rural carriers. In the public record as a part of the CC Docket No. 96-45 proceeding is the quantitative work of the Rural Task

Force (RTF). The RTF demonstrated empirically that the rural carriers have different characteristics from urban carriers. The nature and scope of these significant differences within the subset of rural carrier markets has been placed in the public record by the RTF via its White Paper 2, entitled The Rural Difference, released in January, 2000. This second of five White Papers offered a very detailed empirical analysis of the major rural carrier differences. In brief, the analysis led the RTF to reach nine conclusions with respect to the rural difference issue. These differences were referenced in the Commission's Rural Access Reform Order that was released on November 8, 2001 (MAG Order (FCC 01-304)). In paragraph 4 of this Rural Access Reform Order, the Commission references these rural differences in footnote 9 that is found at the end of the following statement that refers to rural carriers: *"They also rely more heavily on revenues from interstate access charges and universal service support."*

New Form of Uneconomic Bypass

The Commission has worked in the past to prevent uneconomic bypass. However, as the NECA states at page 6:

> *AT&T's plan for access charge-free long distance calls based simply on the type of transmission plant used by the interexchange carrier constitutes discrimination against other carriers that use circuit-switched transmission for their calls, and creates a new form of uneconomic bypass.*

AT&T ATTEMPTS TO CREATE A "REGULATORY TECHNOLOGY PREFERENCE" IN ORDER TO AVOID COMPENSATING ILECs FOR USE OF LOCAL EXCHANGE FACILITIES

If one technology is favored over another by regulatory fiat, as AT&T requests, this will cause uneconomical selection of one technology over another, resulting ultimately in higher costs to the end user. A public policy that would permit carriers to

avoid access charges due to a particular choice of technology within their delivery platform, without changing the costs of the ILEC, would be patently unfair and unlawful.

As succinctly portrayed by Bell South, such an illogical outcome could create a regulatory meltdown:

> *Indeed, under AT&T's theory, carriers could simply convert some piece of every service they provide into IP technology and transmit it over the Internet and avoid access charges with impunity. This policy would not only dissect the Commission's rules regarding intercarrier compensation outside the intercarrier compensation docket currently underway, but would dramatically alter universal service funding and the LEC's ability to receive compensation, for the use of their networks. ... To suggest that phone-to-phone IP telephony, or any telecommunications service, should be magically exempt from access charges simply because some piece of the transmission may traverse the Internet is outside the bounds of logic and reason. (BellSouth, page 8 and 9)*

As Qwest states at page 3 of their filing:

> *AT&T's Petition, if granted, would violate the fundamental principle of technological neutrality by securing an exchange access discount based solely on the type of interexchange technology employed.*

Access should continue to exist in the intercarrier compensation regime when calls are originated or terminated, regardless of the transport technology.

All AT&T has done is change from one digital protocol to another within their internal network. The one difference is that the ISP router simply functions in a similar manner to the toll tandem switch with respect to routing the call for transport and ultimate termination with the called party or parties. Or, as characterized by Qwest at page 7: *"Phone-to-phone IP telephony service is simply modern technology applied to long distance voice service."*

In its petition, AT&T is basically hiding voice telephone service behind technological terms. The service provided to the customer is the same. Regulation of

services should be based on the service offered and not the technology. As OPASTCO states at page 4 of their filing:

> *The exemption from access charges that enhanced service providers currently enjoy must not be twisted into a means for IXCs to avoid providing LECs with just and reasonable compensation for the use of their networks for voice call origination and termination.*

AT&T's RELIANCE ON THE "NEW SERVICE" CLAIM IS INCORRECT

AT&T also uses the argument that their VoIP offerings should be considered as nascent services, and accordingly be considered exempt from interstate access charges (AT&T Petition at 2). In the first page of their filing, Bell South effectively rebuts AT&T's unfounded assertions in the following manner:

> *AT&T insidiously attempts to paint phone-to-phone IP telephony as some inchoate form of voice communications that must be nurtured and pampered until it reaches maturity. However, the fact of the matter is that phone-to-phone IP telephony represents nothing more than a generic phone-to-phone voice call made using a different form of transmission.*

Verizon agrees, stating in part at page 8:

> *The telephone long distance business is hardly a "fledgling industry," and AT&T, the largest long distance company in the country, is hardly in need of special nurturing.*

USTA refutes AT&T's claims of offering a new service with the following:

> *The interexchange industry is not nascent, and AT&T is not deserving of subsidization … USTA contends that IP Telephony is not a new service, but rather traditional telephony utilizing a new technology. Moreover, the ESP exemption was created to enable originating access to an information service and was intended to be a temporary measure. (USTA, pg. ii and 9)*

AT&T also attempts to cloud the debate by cleverly interchanging the terms Internet and Internet Protocol. Internet is in fact a network, that is not owned by AT&T,

but by many different government organizations, educational institutions, and commercial Internet Service Providers. Thus, AT&T's claim that their service is new is unfounded, and an attempt to confuse the issues.

AT&T appears to contend that (AT&T Petition at 7-8) it should be able to avoid the payment of interstate access charges for IP telephony by asserting that the service is an "information service". Other parties strongly disagree with AT&T on this point.

> *The ESP exemption was not an exemption from access charges but a determination at the time that a different rate for interstate access should be applied to a nascent enhanced services provider industry. AT&T's petition is but another attempt at absolving itself of its universal service support obligations by attempting to have its IP-based,* ***phone-to-phone interexchange telecommunications service*** *classified as an information service. (USTA, pg. i and ii) (emphasis added)*

We do not believe that the ISP exemption should apply to phone-to-phone IP telephony. In the Commission's 1998 *Universal Service Report*, the FCC was correct in the portion of its initial conclusion that phone-to-phone configurations are telecommunications services. We contend that AT&T is misconstruing the Commission's further statements in this 1998 report, as referenced by the NH PUC in their comments at page 2:

> If we examine paragraph 52 of the 1998 Report, it states in part that
>
> *The protocol processing that takes place incident to phone-to-phone IP telephony does not affect the service's classification, under the Commission's current approach, because it results in no net protocol conversion to the end user.*

We believe the current rules in effect for federal and state intercarrier compensation regimes require the assessment and payment of access charges for the IP phone-to-phone service discussed in this instant petition. It is worth noting that AT&T

itself details its payment of originating access charges for its phone-to-phone service when customers used 800 access, at page 18 of its petition.

ILEC ACTIONS CRITICIZED BY AT&T IN ITS PETITION ARE ATTEMPTS TO RECOVER LEGITIMATE COMPENSATION FOR USE OF ITS FACILITIES

In the Petition (AT&T Petition at 23), AT&T criticized several carriers attempts to rightfully recover access compensation. AT&T's petition attempts to mask the facts in those situations. As Bell South states on page 2 of its comments:

> *It is important for the Commission to understand that the core issue involved in this Petition is nothing more than the proper compensation to a LEC for the use of its network when an end user places an interstate telephone call through an interexchange carrier ("IXC"). Any call over the PSTN typically originates and terminates on a local exchange carrier ("LEC") network.*

Bell South further states at page 11 of their filing:

> *While innovation is no doubt moving forward in numerous areas, that does not validate abandoning years of established telecommunications law concerning intercarrier compensation.*

Who is in error?

It is not the responsibility of the ILEC segment of the telecommunications market to forego collecting compensation for use of its facilities in order to jumpstart a new AT&T technology platform within AT&T's internal network.

Ironically, a number of carriers allege that it is in fact AT&T that is behaving in an unsavory manner. Examples cited include the following from SBC:

> *AT&T admits it is masking the jurisdictional nature of interstate calls by routing them through CLEC networks so the calls appear to have originated locally. (SBC, page 14, citing AT&T Petition)*

AT&T's PETITION DOES NOT PROVIDE PROPER INTERPRETATIONS OF CURRENT REGULATORY RULES

Qwest highlights AT&T's misleading interpretation of certain existing rules at page 3 of their filing:

> *Not only has the Commission expressly distinguished phone-to-phone IP telephony, as described by AT&T, from information services that permit users some voice capability, but phone-to-phone IP telephony service cannot qualify as an information service even under the broadest reading of the Commission's information services definition.*

The California RTCs reflect a similar conclusion in their comments at page 4:

> *Phone-to-phone long distance telephone calls clearly fall on the telecommunications services side of these regulatory classifications, and the tortured logic of AT&T's petition can do nothing to change this obvious, common sense conclusion.*

SBC points out one of AT&T's errors in the following:

> *Contrary to AT&T's mischaracterization, the Commission has never decided that the ISP exemption should apply permanently. (SBC, page 13)*

AT&T makes certain assertions that access is priced incorrectly (AT&T Petition at 25). This ignores, to a large degree, the progress that the Commission has made in its CALLS and rural access reform orders.

AT&T's Multijurisdictional Agenda

USTA offers one rationale for AT&T's petition – an attempt to influence the many state regulatory agencies.

> *Moreover, USTA contends that AT&T seeks a declaratory ruling on access charges so that it can acquire a determination to influence state commissions in regards to intrastate access charges for IP telephony. We believe that Part 69 of the FCC's rules already provides the requisite "leadership and guidance" to state utility commissions in regards to assessing intrastate access charges for IP telephony. (USTA, pg. 4)*

We reiterate our request for the rule clarification that we submitted with our comment filing:

The Commission should clarify the application of interstate access charges by amending 47 CFR 69.2(b) to read as follows:

69.2 Definitions

(b) Access service includes services and facilities provided for the origination or termination of any interstate or foreign telecommunication. If the call is neither originated nor terminated by the end user in Internet protocol, the call is not an enhanced service and access charges apply. Any carrier utilizing the public switched telephone network to originate from a phone, or terminate to a phone, interexchange telecommunications services is considered to be using an access service, and is accordingly subject to access charges.

CONCLUSION AND RECOMMENDATIONS

The Commission should, with respect to AT&T's instant petition in WC Docket No. 02-361, take the following action:

1) Deny the petition based on the nearly five years of record established since the 1998 Report, recognizing the significant progress that has occurred with respect to access charge reform; and

2) Order that interstate access charges will continue to apply in cases where carriers are utilizing ILEC facilities. If the Commission is truly interested in competitive neutrality, then access charges need to be assessed to all providers of telecommunications services, regardless of the technology or network used to provision the service.

As we stated in our initial comments on page 3:

> Technologies change. Bankruptcies happen. And the one constant is that rural ILECs continue to provide the critical infrastructure that enables Americans to realize the promise of the Telecommunications Act of 1996 and ensures a national communications network in times of crises or emergency. But this cannot

> continue to happen if interexchange carriers that use their facilities do not compensate rural carriers. . .

AT&T's wishful thinking does not magically change a phone-to-phone call into something other than what it is: a phone call that is subject to interstate access charges under the Commission's rules.

Respectfully submitted,

electronically submitted through ECFS

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